CHAPTER –II

(A)

WOMEN’S PROPERTY: A HISTORICAL BACKGROUND

The proprietary position of woman in any system of law represents the thought and the feelings of the community. Hence the proprietary status which a woman occupied in Hindu law was not only an index of Hindu civilization but also correct criterion of the culture of the Hindu race.¹

The position assigned by the Shastras to the widow and even to the women in general, both in her family and society, was a state of dependence and submission. "Day and night" says Manu, "must women be held by their protectors in a state of dependence; even in lawful and innocent recreations, being too much addicted to them, they must be kept by their protectors under their own dominion."

"Through independence, the women go to ruin though born in a noble family....." (Narada, XIII, 30.)

It was believed that the dependant and subservient status of women was because of the fact that they were incompetent to perform sacrifices and to read Vedas. Because of her dependent status her right of having property was also treated with dislike or disfavour as there was general reluctance displayed by the ancient Rishis to allow females to hold property. The cause of reluctance was that in Smritis, property was intended for the performance of religious ceremonies. The primary obligation of a person holding property was to perform religious rites and ceremonies and a person was considered as a sort of trustee for the performance of those rites and ceremonies. Since the females were declared by the Smritis to be incompetent to perform religious ceremonies (Manu, Chap. IX. Verse 10). Therefore, her right to. property was very nominal and whatever little she used to get, that too was hedged with limitations. For instance, her husband could exercise his veto even over certain kinds of

¹ Dr. Kulwant Gill, Hindu Women’s Right to Property in India, 1986 p. 528.
Stridhan. So the question of having absolute ownership in the true sense of the term (which includes right of alienation) did not arise with regard to the property which did not form her Stridhan. She had only the right to have and enjoy, that property for her sustenance and maintenance during her lifetime and this type of right in property was known as "Woman's Estate". In this chapter an attempt has been made to study the nature, evolution and the development of the concept of woman's property through various stages of development.

**CLASSIFICATION OF WOMEN’S PROPERTY:**

The property of a Hindu woman can be classified into two categories:

(i) Those properties over which she has absolute ownership; and
(ii) Those properties over which she has limited ownership

Property falling under the former category are termed, as 'stridhana' and that falling under the latter category are termed as 'woman's estate'. However, under the scheme of the present Hindu Succession Act, 1956 any property acquired by a Hindu female either before the commencement of the Act or subsequent to it and which has been in her possession on the date of such commencement, would be her absolute property, which can be termed as Stridhan in the modern sense. The Act has dispensed with the distinction between the Stridhan and woman's estate. It also dispenses with the distinction with respect to the order of succession between stridhan and women's estate and a general rule of succession has been laid down under it.

**1. STRIDHAN**

Meaning of Stridhan: The word stridhan is composed of two words: Stri (woman) and Dhana (Property). The word means the property belonging to a woman or woman’s property. This is the etymological sense but the word has a technical meaning given in law.² As observed in Rajamma Case.³ A gift given to a Hindu woman before and after her marriage constitute woman’s property. Thus conjunctively these two words imply that property over which a woman has an absolute ownership. By the authors of different schools and

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² B.M. Gandhi, Hindu Law, 1999 p. 178
³ Rajamma vs. Varidarajula Chetti, AIR 1957 Mad 198.
sects it has been used in different senses, yet it connotes a meaning which comes out from the word itself. This term was for the first time used in Smritis and in the Dharmasutra of Baudhayan which meant ‘woman’s absolute property’. Under the modern Hindu law stridhan does not represent any specific property but it includes all those properties of a Hindu Woman Over which she has absolute ownership and which is inherited by her Successors. The two important differences between the term woman’s estate and stridhan are:

(a) A Woman has a limited right of alienation with respect to the properties coming under term woman’s estate. The right of alienation can be exercised by her only in dire necessity, legal necessity, or in the interest of the estate itself; however, with respect to stridhan she has an absolute right of voluntary alienation of the property coming under it.

(b) In case of woman’s estate the property after the death of the woman owner, is inherited by the descendants of the male known as reversioners and not by the descendants of the woman but in case of stridhan the property is inherited by the descendants of the woman herself as was the rule under the old Hindu law”.

SMRITI WRITERS AND COMMENTATORS ON STRIDHAN:

In due course of time the term stridhan came to be understood through the meaning given in the following three sources-

(i) According to smritis,

(ii) According to commentators, and

(iii) According to judicial decisions.

(i) Stridhan according to the smritikars

Manu: According to a text of Manu, there can be no property belonging to woman, Son or a slave and whatever property is earned by them, belongs to that person to whom the woman or slave belongs. It does not mean that they cannot own any property rather it means that they cannot alienate the property. Manu’s view has also been supported
by Gautam. He observed that a woman can own separate property but she cannot alienate the same.

**According to Manu** "Adhyagni (whatever has been given at the time of nuptial fire), Adhyavahanika (whatever has been given at the time of departure of wife), Dattamrite karmani (given out of love and affection) and given by the Father, Mother or the brother, all these are six types of gifts which come under the term Stridhan.\(^4\)

**According to Vishnu** Anything given to a woman by her father, mother, sons and brothers or whatever is received by her at nuptial fire, or whatever she receives from her husband at remarriage, or what she receives from her relatives and the gifts received by her after marriage is stridhan.\(^5\)

**According to Yagyavalkya** To the above list enumerated by Manu and Vishnu, the word 'adi' etc. has been added by Yajyavalkya.\(^6\) Vijyaneshwara, a commentator of Yajyavalkya Smriti, has enlarged the list of properties coming under stridhan due to the use of this word ‘adi’. He includes in the list all such properties acquired through gift, sale, partition other lawful means.

**Katyayana** too while enumerating six kinds of stridhan, identified two more things, under it earning through art and gifts received during unmarried state and those gifts received when the bride went to marital home as also those which was received by her during her widowhood.\(^7\) According to him father, husband, son or brother do not have a right to use or alienate the property falling under stridhan of a woman. Any body who uses the property without woman’s consent is liable to return the same with interest and will also have to pay fine to the king. In case of distress of husband or when he suffers from any disease or is being tortured by the creditors, the woman can herself voluntarily contribute out

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\(^4\) Dr. U.P.D. Kesari, Modern Hindu Law, 3\(^{rd}\) edition, 2001, p. 357.
\(^5\) Supra note 4
\(^6\) Supra note 5
\(^7\) Supra note 6
of the stridhan but the husband should reimburse her later on.

Other Smritikars like Apastamba, Vyas and Deval too have discussed the stridhan on the similar lines. Upon composite study of the views of these Smritikars on stridhan, Adhyagni, Adhyavahanik, Pritidatt and gifts given by the father, brother or mother or relatives in shape of money, Adhivednik, Shulk, or Anivadheya can be referred to as stridhan.

(ii) Stridhan according to commentators

The commentators of Vijnaneshwara i.e., Mitakshara and of Jimutvahan i.e., Dayabhag are important in this respect. According to Vijnaneshwara, the author of Mitakshara Stridhan includes -

a) Gifts given by the father, mother, husband and brothers;
b) Gifts given by the mother and other persons at the time of nuptial fire;
c) Gifts given at the time of 2\textsuperscript{nd} marriage or gifts given to earlier wife when the 2\textsuperscript{nd} wife was brought in;
d) The property which is obtained through gifts, sale, partition, acquisition and other means.

It may be submitted that the extension in the meaning of stridhan by Vijnaneshwara has been because of the use of the word; 'Adi' i.e. by Yajnavalkya Vijnaneshwara interpreting the word 'Adi' etc. remarked that the above list is not final and it covers other properties also.

The author of 'Vyavahar Mayukha, Nilkantha has also approved of the explanation given by Vijnaneshwara. For purposes of inheritance stridhan has been divided into two categories:

a) "Paribhashik' which means that which has been accepted by woman expressly
b) "Aparibhashik' which means those properties which are owned by a woman otherwise.

Smritichandrika and Parnshar Madhavya accept the six kinds of stridhan mentioned by Manu, but together with these, the word "Adya" used by Yajnavalkyn has been interpreted by them in a restricted manner. They opined that all the properties owned by a woman do not fall under
the category of stridhan. In fact in these two commentaries the Pribhashik meaning of Stridhan has been accepted. According to Vivad Chintamani too stridhan covers other properties too which do not fall in the six kinds recognized by Manu. But these commentaries do not mention the meaning given by Mitakshara. According to Dayabhag only some of the properties of woman fall under the head "Stridhan". Only those properties are referred to as stridhan which can be freely alienated by the woman. Dayabhag interpreted the word ‘Adya’ referred to by Vijnaneshwara in Yajnavalkya Smriti as ‘Avam’. According to him such other properties are covered under Stridhan which have been so mentioned by Yajnavalkya.

(iii) Stridhan According to Judicial Decisions

According to Privy Council, any property inherited by a Hindu female either from a female or a male did not constitute stridhan. But in the State of Bombay, a property received through inheritance was placed in the category of Stridhan provided' that it was not inherited from a person in whose family she enters.\(^8\)

It was laid down by Privy Council in Bhagwan Das vs. Maina Bai,\(^9\) that property inherited by a Hindu female from her husband is not stridhan. Hence such property is inherited by her husband’s collaterals and not by her own heirs. In the same way in Shivshanker vs. Devi,\(^10\) it was laid down that property received by daughter from her mother is not her stridhan even if that property has been the stridhan of her mother and thus it reverts to the heirs of her mother. Again in Devimangal vs. Mahadeo Pd.\(^11\) the Privy council further laid down that the share coming under the possession of a woman after partition is also not stridhan. Even in Mitakshara, property received by a widow after partition is not her stridhan, and after her death it reverts to her husband's heirs, unless there has been any contract to the contrary.

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\(^8\) Balwant Rao vs. Baji Rao, (1920) 7 IA 213.
\(^9\) Supra note 8.
\(^10\) Supra note 9.
\(^11\) 34 IA 234 (PC).
It has also been held that where a widow retains her possession for more than 12 years over a joint family property against the heirs, it becomes her Stridhan. Similarly that property is also included under stridhan which is obtained by a widow from government with permanent or alienable rights. Where a property is gifted to a woman at the time of her marriage, is included in stridhan but if the donor is not known to her previously then the husband has a superior authority over the property gifted. According to Dayabhag immovable property gifted to wife by her husband is not stridhan. However, earnings from stridhan or savings therefrom fall under the head stridhan. In the same way the clothes and ornaments of a woman are also treated as stridhan.

The Punjab and Haryana High Court in Vinod Kumar Sethi vs. Punjab State has given an important decision with respect to stridhan. According to this High Court whatever has been received by a bride in marriage or whatever has been gifted to her falls under stridhan. The court divided the gifts and dowry given to her under three heads. First, those items which are given to the bride for her exclusive use; secondly, those which are to be used by her and her husband jointly and thirdly, those which, are to be used by her husband and in laws. Over the first category she has the exclusive right and she is the exclusive owner thereof; over those coming under the second category the court's view was that by saying that both the spouses have the right to use it will not extinguish the right of ownership of the wife even then. In case the marriage breaks or the marriage is dissolved then too the wife has the right to get back those items and she can keep, them in her exclusive possession. Thus according to the above decision all such gifts and presentations which fall under the first two categories are termed as stridhan. The property

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12 Sham Kunwar vs. Wah Kunwar, 29 IA 132.
14 Venkat vs. Venkat, 1 M 281.
15 Brij Inder Singh vs. Janki kunawar, 5 IA 1, Laxman vs. Kalicharan, (1873) 19 WR 292 PC.
16 Harikrishan Das vs. Sunder Bibi, 89 IC 424.
17 AIR 1982 Punj 372.
intended for joint use are under joint control and custody so long their material life subsists.

In a later case namely, Pratibha Rani vs. Suraj Kumar the Supreme Court disagreed with the above view of the Punjab and Haryana High Court and held that whatever gifts, presentations and dowry articles are given to a woman in marriage, would be regarded as her absolute property. All the gold ornaments, clothes and other items of dowry given at the time of marriage to a Hindu female are her Stridhan and she enjoys complete control over it. The mere fact that she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over them. The view of Punjab and Haryana High Court that the dowry goods become joint property of the husband as well as of the wife and both of them exercise equal right and control over them is incorrect. The court observed, it cannot be said that once a woman enters her matrimonial home she completely loses her exclusive stridhan by the same being treated as a joint property of the spouses. In other words, if this view is taken in its literal sense the consequence Would be to deprive the wife of the absolute character and nature of her stridhan and make the husband a co-owner of the same, such a concept is neither contemplated nor known to Hindu law of Stridhan, nor does it appeal to pure common sense. It cannot also be said that once a married Woman enters her matrimonial home her Stridhan property undergoes a vital change so as to protect the husband, from being prosecuted even if he dishonestly misappropriates the same.

SALIENT FEATURES OF STRIDHAN:

The salient features of Stridhan can be described as under:

1) **The test as to whether it is Stridhan** A Hindu female can secure the property form numerous sources but every such property cannot be Stridhan. Whether a property constitutes Stridhan depends upon the following factors:

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AIR 1985 SC 628
(a) Source of the acquiring the property.
(b) The status of the female at the time of acquiring the property, i.e. maidenhood, married status or widowhood.
(c) The school to which she belonged

2) Succession In the matters of succession to Stridhan, a new order of heirs was provided under law which included her own heirs upon whom Stridhan devolved after the death of the female. This rule does not apply to the succession of woman's estate. But now under the Hindu Succession Act, 1956 the distinction between the two categories of property have been abolished and an uniform rule of succession has been provided with respect to stridhan.

3) Power of alienation A Hindu Female possessed absolute ownership over stridhan and hence she enjoyed absolute right of alienation of such property. She could voluntarily dispose it of After the Commencement of the Hindu Succession Act, 1956, every property held by a Hindu female on the date of the enforcement of Act, whether acquired prior or subsequent to the Act, became her absolute property. Hence she has got the absolute power to alienate the same at her volition.

SOURCES OF STRIDHAN:

Properties acquired from the following sources fall under the expression Stridhan-

a) Gift received from relatives.
b) Gifts and bequests from strangers during maidenhood.
c) Property obtained in partition.
d) Property got in lieu of maintenance.
e) Property acquired by inheritance.
f) Property acquired through technical skill and art.
g) Property acquired by compromise.
h) Property acquired by adverse possession.
i) Property purchased with the earnings of the stridhan or with savings of income from stridhan.
j) Property acquired lawfully from sources other than those mentioned above.

KINDS OF STRIDHAN AND ITS INCIDENTS:

a) Adhayagni – gifts given at the time of nuptial fire.
b) Adhyavaharika – gifts given to bride while going to her husband’s house.
c) Prtidatta – gifts given to the daughters in law by mother and father in law out of love and affection.
d) Patidatta – gifts given to her by her husband.
e) Padvannadanika – gifts given by the elders while wishing them and paying them respect.
f) Anvadhyeyaka – gifts received from husband after her marriage.
g) Adhivedanika – gift given to first wife when the second wife was brought
h) Shulk – money received for marriage
i) Bandhudatta – gifts given by relatives of mother and father.
j) Vritti – money given for maintenance and properties purchased from the money given towards her maintenance.
k) Yavtaka – when the bride and bridegroom sat together after marriage and received gifts i. e., the gifts given to wife during marriage.
l) Ayavtaka – those which did not fall in the yavtaka category mentioned above.
m) Saudayika and Asaudayika – This kind of stridhan covers those properties which are received by women from her husband, father or at husbands' or father’s house. The division of, stridhan by Katyayana into Saudayika and Asaudavika depends upon right of alienation. She has an absolute right over all the Saudayika Properties\(^\text{19}\). Over Asaudayika Stridhan the husband too has the right of ownership.

n) Paribhashit and aparibhashit-Technical stridhan – Mayukha law divides

\(^{19}\)Geeta Shlok, see Prof. U.P.D. Kesari 3\(^{rd}\) ed.,2001, p. 361
the stridhan into paribhashit and aparibhasit categories. The paribhasit one is given to the woman before fire or at the time of her departure for husband's home. Other properties given to her fall under aparibhasit category.

**RIGHTS OF WOMEN OVER STRIDHAN:**

The right depends upon the status and source of the stridhan-

Unmarried status - Any Hindu woman can dispose of the stridhan voluntarily. However if she is minor, minority renders the incompetency to the right of disposal.

Married status: The right of disposal of the stridhan varies with the nature of the stridhan. For this purpose the stridhan has been divided into saudayika and asaudayika stridhan. During marriage the saudayika stridhan could be alienated freely by her, but asaudayika stridhan could be alienated by her with the consent of her husband only. This rule is subject to the condition that where husband and wife live together. Where both have departed, asaudayika stridhan can be disposed of by the wife even without the consent of her husband. Generally husband has no control over the stridhan of his wife, yet in emergency he could still use and dispose the same without the consent of his wife. In calamities or for religious purpose or if the wife has taken the stridhan, then its return or repayment depended upon the wishes of the husband.

During widowhood. - During widowhood the woman has an absolute and unrestricted right of alienation of property, irrespective of the fact whether it has been acquired prior or after the death of the husband. Thus she can alienate the properties without any constraint. So far as the question of succession to the property of a woman of bad character is concerned, her bad character does not extinguish the blood relationship. Thus her near relatives, who have not professed the profession of bad character, can inherit the property.

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22 Brijinder Singh vs. Janaki Kunwar, 1 Cal. LR 318.
23 Hira Lal vs. Tripura, 40 C 650: WN679 (FB).
legitimate son will thus exclude her illegitimate daughter\textsuperscript{24} and her husband will exclude his illegitimate son\textsuperscript{25}.

So far as the dancing girls are concerned the rules of succession were entirely different. These girls followed this practice due to their family custom or due to their family trends. In their reference no distinction existed between legitimate and illegitimate children. For these girls all children born to them were on the same footing and were treated legitimate whether the daughters of such girls were natural born, i. e., avras or dattaka, they inherited as daughters. In Jagdamba vs. Saroswati\textsuperscript{26} it was held that a dasi putri and married daughter inherited equal shares in their mother's property. This view has also been approved by the Supreme Court.\textsuperscript{27}

Succession to property of Devadasis and Dancing girls was carried out according to the customs and prevailing usages. No coparcenary developed between daughters and mothers. Hence no daughter could claim partition against her mother.\textsuperscript{28}

**STRIDHAN, ITS SUCCESSION UNDER HINDU SUCCESSION ACT, 1956:**

The Hindu Succession Act, 1956 has abrogated the law relating to Stridhan which existed prior to the incorporation of Section 14 in the Act. Section 14 provided that every property which was in possession of a Hindu female at the time of the enforcement of the Act, whether acquired prior to or subsequent to the Act, became her absolute property. The old law relating to the order of succession to such property has been done away with and a new order of succession has been introduced in its place, which included females as well. A uniform law relating to various categories of heirs has been contained in Section 15 of the Act Since every property validly in her possession became her stridhan, a full uniform law of succession to such property had become essential. Thus on the death of a Hindu female intestate, her stridhan devolved according to the

\textsuperscript{24} Meenakshi vs. Hirniyandi, 38 M 1144.
\textsuperscript{25} Jagannath vs. Narayan, 31 B 543.
\textsuperscript{26} ILR 1950 Mad 553
\textsuperscript{27} 1953 SCR 939.
\textsuperscript{28} Gangamma vs. Koppamal, 1939 M 139.
rules contained in Section 15 and 16, but in no case according to the old law.

Section 15 lays down that when a Hindu female dies intestate leaving her stridhan, it would devolve upon the following categories of heir according to the rules provided in Section 16 of the Act:

a) Firstly, upon sons and daughters (including the children of a predeceased son or daughter) and husband;
b) Secondly, upon the heirs of husband;
c) Thirdly, upon father and mother;
d) fourthly, upon the heirs of father;
e) fifthly, upon the heirs of mother;

2. WOMEN’S ESTATE:

Meaning of woman’s estate and its nature: Widow who is a limited heir acquires the property for her life time but she is the owner of the property thus inherited as a tenant. But her right of alienation is limited and after her death the property does not pass to her heirs rather to heirs of the last full owner thereof. Therefore, the characteristic feature of woman’s estate is that the female take it as a limited owner, however, she is an owner of this property in the same way as any other individual can be owner of his or her property subject to basic limitation: (a) she cannot ordinarily alienate the corpus and; (b) on her death it devolves upon the next heir of the last full owner. In Janki vs. Narayaswami, the Privy Council has observed.

“Her right is of the nature of right of property, her position is that of owner; her powers in that characters are, however, limited. So long as she is alive, no one has vested interest in succession.”

Earlier Moni Ram vs. Kerry the Privy Council said: the whole estate is for the time vested in her absolutely for some purpose, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of a tenant in tail. It would perhaps be more

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30 Bijay vs. Krishana, 44, IA 87.
31 (1916) 43 I.A. 207.
32 (1889) 7 I.A.115.
correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is, it is clear that until the termination of it, it is impossible to say who are the people who will be entitled to succeed as heirs to her husband. The succession does not open to the heirs of the husband until the termination of the widow's estate.”

Her power of the disposal over the property is limited and it is the limitation which goes to define the nature of her estate. These limitations are not imposed for the benefit of the reversioners. Even when there are no reversioners, the estate continuous to be a limited estate.

The followings constituted woman's estate-

(a) **Property Obtained by Inheritance**

A Hindu female may inherit the property from a male or a female. She may inherit it from the parent's side or husband's side, Mitakshara has considered all the inherited property as stridhan. But the Privy Council in a series of decision held that property inherited by a female from males, is not stridhana but woman's estate. In another set of cases, it took the same view in respect of the property inherited from the females. This is the law in all the schools. According to Bombay school, the property inherited by a woman from females, is her stridhana. As to the property inherited from a male, the female heirs are divided into two: (1) those who are introduced into the father's gotra by the deceased male by marriage such as intestate's widow, mother etc, and those who are born in the family such as daughters, sisters, brother’s daughter etc. in the latter case the inherited property is stridhana, while in the former case it is women's estate.

(b) **Share Obtained on Partition**

When a partition takes place, except in Madras, father's wife (not in Dayabhaga school) mother and the grandmother take a share in the joint

33 Bhagwandeen vs. Maya Bae, (1877) 11 MIA 487, Thakur Dyehee vs. Raj Baluk Ram, (1866) MIA 140.
35 Kasserbai vs. Hansraj, (1906) 30 Bom. 130.
family property. In Mitakshara jurisdiction, including Bombay\textsuperscript{36} in Dayabhaga school it is in an established view that the share obtained on partition is not stridhan but woman's estate.\textsuperscript{37}

**POWER OF MANAGEMENT:**

Like the karta of a Hindu family, she has full power of the management. Her position in this respect is somewhat superior to the karta. The karta is namely a co-owner of the joint family, there being other coparceners, but she is the sole owner, she has not to look after or bother about others. Thus she alone is entitled to the possession of the entire estate and she alone is entitled to its entire income. Her power of spending the income is absolute.\textsuperscript{38} She need not save, and if she saves, it will be her stridhan.\textsuperscript{39} She alone can sue on behalf of the estate and she alone can be sued in respect of it.\textsuperscript{40} She continues to be its owner until the forfeiture of estate, by her marriage, adoption, death or surrender.

**POWER OF ALIENATION OF WOMEN'S ESTATE:**

Alienation, in jurisprudence, is one of the natural and necessary incidents of all movable and immovable, tangible or intangible property. In fact, absolute power of alienation is inherent in the absolute ownership of property. In ancient India, since the basis of the Hindu social order was a joint Hindu family and not an individual, absolute ownership of all property invariably resided with the former. Therefore, in matters of alienation of property -especially immovable - the real power did never lie in the hands of a father/head/karta alone. The Hindu law-givers did not deem it fit to invest him with, such powers in spite of the fact that he enjoyed sui-generis and unique position in the prevalent joint family system. The law therefore, required the head or karta to collect all the male members of his family and secure their consent before deciding upon the alienation of property moveable or immovable except in the ordinary course for the maintenance of the members of the family or for pious purposes. However, in

\textsuperscript{36} The Vijawahara Maynkha takes the view that such property is stridhana, but the Privy Council 'legislated' and held that such property is woman's estate

\textsuperscript{37} Devi Prasad vs. Mahadevo, (1912) 39 I.A. 121

\textsuperscript{38} Ramsumran vs. Shyam, 1922 P.C. 356.


\textsuperscript{40} Radharam vs. Brindarani, 1936 Cal. 392.
exceptional situations the karta was deemed fully competent to take independent decisions. Verse 28 of the Mitakshara talks about exceptional circumstances as, "Even a single individual may conclude a donation, mortgage, or sale, of immovable property, during a season of distress for the sake of the family, and especially for pious purposes."

Almost same circumstances have been mentioned in Verse 29, Chapter I, Section 1 of Mitakshara, "While the sons and grandsons are minors, and incapable of giving their consent to a gift and the like; or while brothers are so and continue un-separated; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immovable property, if a calamity affecting the whole family requires it, or the support of the family renders it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable." Thus the exceptional circumstances were:

a) Legal necessity.


c) Benefit of estate.

Women, obviously had absolutely no say in such matters in the male dominated society. The Shastric law required only male members to be convened and consulted. Even in matters regarding woman's estate the ancient law giving sages did not dream of investing women with absolute powers of alienation. They, in fact, enjoyed only limited ownership of property and hence could not be given greater powers of alienation than those enjoyed by Kartas or heads in the joint family system of society. Moreover, women, in those days were held in such low esteem that they were considered to be wholly incapable of managing and holding property as absolute owners Property, under exceptional circumstances or otherwise, except the Stridhan only, were allowed to be possessed by them merely as limited estate and nothing more. Hence a Hindu widow's estate meant only a qualified proprietorship with powers of alienation only in cases of dire and justifiable necessity definite restrictions on her power of alienation were not only considered to be important but also inseparable. The law, therefore, did not permit her ownership of the deceased husband's property
to extend beyond her life-span during which she could represent the estate so long as she acted genuinely and sincerely in the interest of the estate. After her death the property reverted to the heirs of her husband instead of going to her heirs.

Enumerating the reasons of restraining and curtailing woman's power of alienation of property Lord Justice Turner of the Privy Council, said in his speech in the Collector of Masulipatam vs. Cavaly Vencata Narainapah,\(^{41}\) that the dependent status of women in that society rather than the idea of protecting the interests of husband's heirs was chiefly responsible for this state of affairs. After reference to a number of authorities on the subject. His Lordship noted that the social position allowed to women in that hoary past was no more than that of tutelage; and that like children they too, required protection. The law, therefore, could not permit them to act independently especially in matters regarding ownership and alienation of property.

M. N. Srinivasan offers almost the same opinion though with a rider. Legal limitations, according to him, were not imposed upon woman's power of alienation out of tender regard. For the rights of reversioners, for no such right existed during her life span. For the reasons, therefore, we must look to her social status, instead, which made it incumbent upon her to lead a simple life of abstemious piety directed towards the acquisition of merit for the departed soul of her husband by bidding adieu to the pursuits of sensual pleasure for its own sake.

In order to understand the nature of widow's estate vis-a-vis her power of alienation, we have to examine and analyse various texts, commentaries and judicial decisions.

Mitakshara school of Hindu Law, did not intend to give only life interest to women in property obtained either by inheritance or partition nowhere Mitakshara distinguished rights of males from those of females. Vijnaneswara, the author of Mitakshara, inclined heavily in favour of the fair sex. He supported his theory with the help of the following text of Yajnavalkya:

“……… What was given to woman by the father, the mother, the husband, or as brother, or received by her at the nuptial fire, or presented to her on her husband’s marriage to another wife, also any other separate acquisition, is denominated a woman’s property.

Commenting upon the above text of Yajnavalkya, Vijnaneswara stated as follows:

"That, which was given by the father, by the mother, by the husband, or by a brother, and that, which was presented (to the bride) by the maternal uncles and the rest(as maternal uncles, maternal aunts) at the time of wedding, before the nuptial fire, and a gift on a second marriage, gratuity on account of Supersession, as will be subsequently explained, (to a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession). …….. and also property she may have acquired by inheritance, purchase, partition, seizure or finding, are denominated by Manu and the rest as ‘woman’s property’

According to Dr. P.V. Kane, Yajnavalkya and Vishnu among Smriti writers, were probably the first to enunciate clearly the rule that the wife was the foremost heir of a man dying without male issue. Brihaspati too, held the same view and supported it with very cogent reasons. Vedas, Smritis and popular usage, he argued held fair sex in such high esteem that a wife was deemed to be the better half of man or literally speaking, the half portion of husband’s body, sharing in equal proportion the consequences- sweet or bitter - flowing from his good or equal deeds on this earth. A man survived by his wife, therefore, was deemed to be alive in as much as his ‘better half’ or half portion of his body still lived in his wailing widow. That is why Brihaspati held, that a widow had a better title to the property of her deceased husband in case of no surviving male issue to those of all his kinsmen including nearest relatives like father, mother, brothers, etc. Elaborating his argument further, he said that while a husband outliving his wife consigned her body to 'his sacred flames' the one whose fate it was to be outlived must, embrace 'his sacred flames' himself and be consumed by their lapping tongues, having and consigning all his worldly effects to the care of his
better half—the wailing widow. And then to this, Brihaspati added as rider: To inherit her husband’s property a widow must not only be pious but also physically chaste.  

However, Dayabhaga School neither minced matters nor words in emphatically declaring that widow had no right whatsoever of alienation in any manner of inherited property. She could only enjoy and that too, in very limited sense, this property inherited after the demise of her husband provided she kept “the bed of her Lord unsullied and abided with her protector.” On her death the property was to return to the husband's heirs.

Dayabhaga took note of various passages from Mahabharta which permitted only a stingy and bare ‘use’ of husband's property by a widow. In Dayabhaga, Chapter IX, Section I, Verse 60 a passage from Mahabharta was also quoted viz., "Thus in the Mahabharata, in the Chapter entitled Danadharma it is said "For women, the Heritage of their husbands is pronounced applicable to use. Let not woman on any account make waste of their husband's wealth."

Jagannatha Turkupunchnun also quoted the following passage from Mahabharata in his Digest:

“Simple enjoyment is declared to be the fruit which women gather from the heritage of their lords; on no account should they waste the estate of their husband.”

What the term ‘use’ according to Dayabhaga included was explained in Verse 61 of Section 1 of chapter XI as: Even use should not be by wearing delicate apparel and similar luxuries: but since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In the like manner (since the benefit of the husband is to be consulted), even a gift or other alienation is permitted for the completion of her husband’s funeral rites. Accordingly the author says, 'Let not women waste'. Here 'waste' intends expenditure not useful to the owner of the Property.”

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43 Supra Note 43  
44 Supra Note 44  
45 Supra Note 45
In fact the term 'use' was interpreted by Dayabhaga in a very narrow sense and it meant bare subsistence. She could neither spend on personal embellishments including fine clothes and cosmetics nor purchase other items of luxury and physical comfort she was authorised to take only that much out of the inherited property which was barely sufficient to make both ends meet. Apart from this she was permitted to make a gift or even alienate a part of the inherited property in order to complete the funeral rites of her husband. All other expenditure on her part was sheer 'wastage' as it was in way 'useful' to the owner of the property. But where a widow could not otherwise arrange for means of bare subsistence this school allowed her to alienate in any suitable manner for the purpose Verse 60, Section 1, Chapter XI of Dayabhaga, read: "Hence, if she be unable to subsist otherwise, she is authorised to mortgage the property; or if still unusable she may sell or otherwise alien (sic) it for the same reason, is equally applicable."

Dr. Mitra\(^{46}\) gose a step further when he opines that reversioners had no right to impeach alienation of property by a widow in case it was affected to raise funds, to support and maintain those relatives of her deceased husband whom she was obliged to maintain out of his property after his demise.

Our sages also emphasised the importance of initiatory rites of the children. According to them it was a duty, incumbent upon the late owner to perform the initiatory rites of his children, and if he died without performing them, the widow was bound to perform because if the ceremonies remained unperformed, the spiritual welfare of the late owner to some extent was jeopardised. Dr. Mitra\(^{47}\) made it clear that the only member whose; initiatory rites the widow was to perform was the daughter and the initiatory rite in the case of the daughter was her marriage. Her marriage was considered obligatory on the widow because sages emphasised that if the girl attained puberty without being married the future salvation of the ancestors would be forfeited. Verse 6, Section II, Chapter XI of Dayabhaga, stated as follows:

\(^{46}\) Dr. J. Jolly, (Tagore Law Lectures, 1879), The Law relating to Hindu Widow, p. 302.

\(^{47}\) Ibid, p. 304
“………. should the maiden arrive at puberty unmarried, through, poverty, her father and the rest would fall to a region of punishment, as declared by holy writ ….”

Our sages have also advised the widow about the share in her husband’s property which she should give to the Hindu Law it was considered obligatory on the widow to pay the debts of her husband, otherwise the spiritual welfare of the husband would be sacrificed. However, she was not justified in alienating the property for the payment of her personal debts, unless the debts were the consequence of prior debt owed by her husband.

As Hindu law in general and its Dayabhaga School in particular held the deceased husband as the true proprietor though in absentia, all expenditure incurred out of his estate on such acts beneficial to his soul were deemed not only imperative but also lawful. These included making proper gifts to the late husband’s relatives but not to her own at his funeral obsequies, and paying off his debts so that he might not take birth in the family of his creditors as a woman, slave or a quadruped. She, however, was not allowed to alienate property to defray her own personal debts.48

It shall not be out of place to mention here that Nilakantha, the author of Mayukha, was far more liberal in as much as he permitted widows to alienate inherited estate; for all sorts of religious and charitable purposes though not otherwise. Commenting upon the text of Katayana prohibiting alienation of property by widows Nilakantha observed that it forbade gifts to unworthy person only.49

According to Dr. Jolly,50 Mitramisra, the author of Viramitrodaya, too held the same opinion. He however, was more explicit and forthright about a widow’s right over her estate which he discussed at length in the chapter on obstructed heritage. A Hindu widow, according to him was at liberty to use the entire

48 Supra Note 51
49 Supra Note 52
50 Dr. J. Jolly, (Tagore Law Lectures, 1883), Outline of History of the Hindu Law of Partition, Inheritance & adoption p.254
inherited estate without indulging in wasteful expenditure and hence forbade expenditure such as making gifts to unworthy persons like players, dancers and other of illeopute; wearing costly and gaudy apparel, cosmetics and jewelry, eating dainty dishes, and acquiring things other than necessities. She was absolutely free to make gifts for charitable purposes and to spend on other religious acts ordained by Dharma.\textsuperscript{51}

According to Dr. Jolly, another Digest writer, Jumutavahana’s awfully narrow view of Hindu widow’s rights over inherited estate failed to register itself either as a shock or as surprise if considered in the light of extension of female succession to undivided property found in the Bengal School of Hindu law. While attacking the narrow views of Jimulavahana on the subject, he went to the extent and asserted that the Bengal theory of Factum valet was applicable to women as to men. That, however, was wrangling for victory rather than for truth, and what Mitramisra actually wanted to establish was the following:

Women may use the entire property inherited from their husbands, but they are not allowed to waste it.

(a) A wasteful use of property includes - (a) make presents to players, dancers and the like unworthy persons; (b) wearing costly dresses and the like and eating dainties and the like; (c)selling or mortgaging the property otherwise than in cases of necessity, i.e., if they are unable to subsist otherwise.

(b) Gifts made for religious purposes are always valid.

(c) The widow is not bound to preserve the whole property for his co-heirs. They take after her death what is left of it.\textsuperscript{52}

Lord Justice Turner, in the well-known case of Collector of Masulipatam vs. Cavaly Venkata Narainappau,\textsuperscript{53} observed:

It is clear that under Hindu law, the widow, though she takes as heir, takes a special and qualified estate compared with any estate that passes under the

\textsuperscript{51} G.C. Sarkar, Viramitrodaya Translation, Ch. III part 1, S.3, p. 141.

\textsuperscript{52} Dr. J. Jolly, (Tagore Law Lectures, 1883), Outline of History of the Hindu Law of Partition, Inheritance & adoption p.259

\textsuperscript{53} (1859-61) 8 M.I.A. 529.
English law of Inheritance, it is an anomalous estate. It is a qualified proprietorship and it is only by the principles of Hindu law that extent, and, nature of the qualification can be determined.\textsuperscript{54}

The authorities quoted above establish the following points:

(a) The estate of a Hindu widow was not a life estate.

(b) She was a proprietor of the estate with a right of alienation.

(c) Each alienation by the widow in the exercise of that right must be judged by the circumstances in which it was made.

In fact, according to Mr. Justice Mitter\textsuperscript{55}, the widow was nothing more than trustee for her life for the soul of her deceased husband and not for the heirs of her husband. Her possession and enjoyment were in the right of her husband, but his powers of alienation was not transmitted to her. Until her death, "half of the body of the husband" survived; and in the absence of the male issue, the heirs could not be ascertained till her death. Only that gift or other alienation was permitted which was for the completion of the husband's funeral rites or for her subsistence. She could also give presents to the Sapindas and other relatives of her husband at his funeral rites and to defray the marriage expenses of the girl she as permitted to give a fourth part of her husband's estate.

The earliest and probably the most important case in which the nature and extent of the widow's interest came for consideration was Kasinautha Bysack vs. Hurrosunderay. The brief facts of the case were that Hurrosundery Dossee, the widow of Bishwanath Bysack, sued her husband's brothers to recover possession of her husband's property, moveable as well as immovable. The Supreme Court of Judicature at Bengal held (East, C.J. Presiding) that Bishwanath Bysack having died without issue, the plaintiff, as his widow, was by Hindu law entitled to an interest for her life in the whole of his immovable or personal estate. A bill of revivor was afterwards filed by the defendants, and the

\textsuperscript{54} Supra Note 56

\textsuperscript{55} Mussamut Noomurto vs. Mussamut Doorga Konwar, SDR for 1850, p. 245. The same view was expressed in Bijoy Gopal Mukerji vs. Krishan Mahishi Debi, I.L.R.(1907) 34 Pal. 329; Janaki Ammal vs. Narayanasami, AIR 1916 P.C. 117 ; Bahadur Singh v: N. S. Sultan Husain Khan, AIR 1922 Oudh, 171; Kandhya vs. Mt. Raj Kunwar, AIR 1923 All. 367; Kesho Prasad Sigh Bahadur vs. Chandrika Prasad Singh AIR 1923 Pat. 122
Supreme Court amended its decree by declaring "that the respondent Murrosundary Dossee is entitled to the real and personal estate of her husband, to be possessed, used, and enjoyed by her as a widow of a Hindu husband dying without issue, in the manner prescribed by Hindu law."

The case-law noticed earlier shows that the general rule of Hindu law was that, as regards the property inherited by the widow from her husband, she was incompetent to alienate it. This rule, however, was subject to one important exception. viz. that the alienation by a Hindu widow was valid if made for legal necessity. Thus, where there was a necessity for a transfer, the restriction imposed by Hindu law on her power to alienate disappeared and the widow as owner had the fullest discretion to decide as to what form the alienation should assume.

Their Lordships of the Privy Council observed succinctly in Janaki Ammal vs. Narayanswami Aiyer.\textsuperscript{56} "Her right is of the nature of a right of property; her position is that of owner; her powers in that character are however limited."

Thus Woman's estate was owned by the woman, though from the point of view of disposal her powers were limited. And in fact it was the limitation on her power of disposal which defined the nature of her estate. The limitation was not imposed on the estate for the benefit of the reversion; even if there were no reversioners, the estate was with the limitation. The principle restraining the woman from disposing of the property had been explained by their Lordships of the Privy Council in Collector of Masulipatam vs. Narrainapah Vencata\textsuperscript{57} in the following passage:

"It is admitted, on all hands, that if there are collateral heirs of the husband, the widow cannot of her own alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last she must show necessity, on the other hand, it

\textsuperscript{56} ILR (1887) XI Bom. 320 at p. 323
\textsuperscript{57} (1959-61) 8 M.I.A. 59.
may be taken as established that an alienation by her which would not otherwise be legitimate, may become so if made with the consent of her husband’s kindred. But it surely is not the necessary or logical consequence of this latter proposition that in the absence of collateral heirs to the husband, or on their failure, the fetter on the widow’s power of alienation altogether drops. The exception in favour of alienation with Consent may be due to a presumption of law that where that consent is given, the purpose for which the alienation is made must be proper.\(^{58}\)

Thus, a female owner, being a holder of limited estate had limited power of alienation. Like a karta her powers were limited and she could like karta alienate property only under the following exceptional circumstances as was also stated by the Privy Council in Ramsumran Prasad vs. Shyam Kumari.\(^{59}\)

a) For legal necessity.

b) For religious purposes.

c) For the benefit of the estate.

Whether or not a particular alienation fell in any of the above specified purposes depended on the facts of each case. All that can be said is that if she could establish that the alienation was necessary and was in accordance with the principle of Hindu law, then and then only the alienation would be valid. At the same time it was not void ab initio but was only voidable at the instance of reversioners if it transgressed the limitations imposed by the Hindu law on the power of alienation. This was affirmed by the judicial decisions\(^{60}\) also wherein it was held that in Hindu law an alienation by a widow of her husband’s estate without legal necessity was not altogether void but it was prima-facie, voidable at the option of the reversionary heir.

It may be noted that the judiciary has not defined any of the above three

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58 (1859-61) 8 Moo. Ind. App. 529 at pp. 550-51
59 AIR 1922 P.C. 356.
purposes with any precision; in numerous cases an attempt has been made to
describe three exceptional circumstances when a widow could alienate her
widow's estate. Thus it is essential to study how they have been explained,
categorized and pinpointed in various cases. It is proposed to discuss the same.

a) Legal Necessity

The expression legal necessity did not occur in the original works on Hindu law. It was coined by English lawyers who administered justice in this country, but it concisely expressed the notion, in a generalized form, of grounds which, in Hindu law, rendered the alienation by the widow valid.

The word 'necessaries' used in common parlance means things which are indispensable and unavoidable for the life and health of a person. The word 'necessary', however, is not confined in its strict sense to such articles as are necessary to support life, but extends to articles fit to maintain the particular person in the state, degree and station in life in which he is; and, therefore, courts must not take the word necessaries in its unqualified sense but with the qualification as above pointed out. What is necessary is a relative fact, to be determined with reference to the fortune and circumstances of the particular person; articles which to one person may be more convenience or matters of taste, may in the case of another be considered necessaries, where the usages of society render them proper for a person in the rank of life in which he moves. In short, necessaries would exclude things which are purely ornamental but the term is not confined in its strict sense to such articles as are necessary to the support of life, but extends to articles fit to maintain the particular person in the state, station and degree in life in which he is. Thus articles of mere luxury are always excluded though luxurious of utility are in some cases allowed in the description of necessaries. Lord Phillimore in Ramasumran Prasad vs. Mst. Shyam Kumari⁶¹ stated that "it should be observed in limine that the word necessity, when used in this connection,

⁶¹ AIR 1922 P.C. 356 at p.357
has a somewhat special almost technical meaning."

The various heads under which legal necessities can be enumerated may now be considered.

(i) **Payment of Husband’s debts**

Repayment of debt is not merely a legal obligation but its non-payment is a sin under Hindu law. Brihaspati ordained, "he, who having received a sum lent or the like, does not repay it to the owner, will be born hereafter in his creditor's house, a slave, a servant, a woman, or a quadruped. According to Narada if a very religious and devoted person died indebted, the whole of the merit of his sacrifices and devotions would belong to his creditors. The duty of relieving the debtor from these evil consequences was placed on the descendants. The sons were under pious obligation to discharge their father's debt provided it was not avyavaharika. Even father's power to discharge his antecedent debts, not being illegal or immoral, was recognized under Hindu law and for the repayment of such antecedent debts he could alienate the joint family property.

According the Mayne\textsuperscript{62} the liability of a person to pay debts contracted by another arises from three different sources, viz. first, the religious duty of discharging the debtor from the sin of debts; secondly, the moral duty of paying a debt contracted by one person whose assets have passed into the possession of another; thirdly, the legal duty of paying debt contracted by one person as the agent, express or implied, of another, or having an authority conferred by Hindu law to act on behalf of another.

(ii) **Payment of Husband’s Time-Barred Debts**

The question which pricked the minds of Hindus Jurists was whether the payment of husband's time-barred debt could be regarded as legal necessity. The law of Limitation only bars the recovery of a time-barred debt by a debtor or his representative, if he voluntarily chooses to

\textsuperscript{62} Mayne, Hindu Law and Usages, 13\textsuperscript{th} edition, 1995, p. 395
do so. In a number of cases the learned judges of various High Courts ruled that since under the Hindu law the payment by a widow of a debt due by her deceased husband, whether time-barred or not, was considered to be a pious act, which would conduce to the bliss of the departed soul, the widow should pay even a time-barred debt of her husband. Mr. justice West of the High Court of Bombay in Chimnaji Govind Godbole vs. Dinkar Dhoodey godbole, Stated that the moral obligation could not be obliterated by the circumstance that the law of limitation barred or did not bar a suit against the widow for the recovery of her husband’s debt. The estate passed to her as an aggregate, property and obligation together, and she was at least justified in applying the one to satisfy the other. The Madras High Court in Kodak vs. Subba, also held that the debt was time-barred or not did not affect the question. She was at liberty to pay her husband’s debts, although barred by limitation. It was further observed that although the managing member of a joint Hindu family could not as such revive a barred debt as against his coparceners, it was competent to the widow of a deceased member of the family, who represented the inheritance for the time being and in whom it was a pious duty to pay her husband’s debts, to bind the reversioners by a mortgage executed to secure such debts though they were barred at the time of its execution. In Lukmeram vs. Khooshahslee, it was ruled that the manager stood in a different position. He could act only with the assent, express or implied, of the body of coparceners. In widow’s case, the coparceners were reduced, to herself, and the estate centered in her. The widow could, therefore, do what the body of coparceners could do subject

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64 I.L.R(1887)XI Bom.320 at p.323
65 I.L.R.(1890)13 Mad.189 at p.190
66 1 Bom.455.
to the condition that she acted fairly to the expectant heirs.

(iii) Daughter’s Marriage

Marriage, according to Shastras, is a religious act, a sanskara for a man and a woman. Several texts lay down that it is an imperative religious duty and moral obligation of a father, mother or other guardian to give a girl in marriage before she attains puberty. According to texts, the marriage of a girl by her father enjoined as a religious duty in order to prevent him from being degraded and visited with sin, direct spiritual benefit was conferred upon him by such a marriage. If a person is not in a position to bear marriage expenses, then even joint family property could be alienated. If the widow was the only surviving person, it was her duty to give daughter in marriage. The question whether the alienation of property made for the expenses of the daughter’s marriage could be considered as legal necessity, came for consideration before various High Courts and the question was answered in the affirmative. Lord Gifford in Kassimath Bysack vs. Hurro Sunday stated that Hindu widow had "for certain purposes a clear authority to dispose of her husband's property and might do it for religious purposes, including dowry to a daughter." In Sundrabai Javji vs. Shivnarayana67 their Lordships observed that a gift could be made at the time of or on the occasion of the marriage or any ceremony connected therewith, and might also be made in fulfillment of a promise made in connection with the marriage. Even the obligation continued till it was discharged or fulfilled and such fulfillment might be subsequent to the marriage. In Kudutamma vs. Narasimha Charyulu68, Milller, J., observed: “If then a brother, finding that his sister, though married in his father’s life time, has been for any reason left without a marriage portion which she ought to have received, it is difficult to see how he can be held to have exceeded his powers if he makes good the deficiency out of the family property........”

67 I.L.R.(1908) 32 Bom. 81.
68 17 M.L.J. 528.
(iv) Expenses for child marriage – not legal necessity

No doubt our sages provided that the girl should be married when she could move naked in the family or before she attained the age of puberty and the property alienated for the purpose was considered to be for legal necessity. But at present because of the passing of the Child Marriage Restraint Act, 1929, such alienation cannot be held as for legal necessity because under this Act child marriage constitutes an offence, as was observed by Mr. Justice Harnam Singh in Ghulam bhikh vs. Rustom69 Mr. Justice Bhandari in Hira Lal VS. Mt. Amri70 also held that a sum advanced for the marriage expenses of the child being one for the performance of an act which constituted an offence under the Child Marriage Restraint ACT, 1929, could not be treated as one covered by legal necessity.

(v) Marriage of Daughter’s Son

The marriage of a son in a Hindu joint family has been held to be as such a samskara as that of the marriage of a daughter. Under Hindu law a son occupied a special and privileged position. Daughter’s son known as ‘Putrikaputra’ was considered to be like a son’s son who was to offer funeral oblation to his ancestors and was, therefore, particularly worthy of honour. The Madras High Court in Mallayya vs. Bapi Reddi,71 Venkatasubba Rao vs. Anand Rao72 and Praisa Mudaliar vs. Nataraja Udayar73 also held that the alienation of the purpose of meeting the marriage expenses of a daughter’s son would be binding on the reversioners provided it was shown that the limited owner acted not with extravagance.

(vi) Marriage of the Nearest Reversioner

Even where a widow alienated some lands to meet the marriage

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69 AIR1949 A. P. 354.
70 AIR1951 Puj. 421
71 AIR1932 Mad, 28
72 AIR1934 Mad, 432
73 AIR1950 Mad, 337
expenses of the nearest reversioner, the presumption was that the circumstances justified alienation until contrary was proved by the party challenging the alienation until contrary was proved by the party challenging the alienation, as was held in Sevu Vandavan vs. Narayanasami Iyer.\textsuperscript{74}

\textbf{(vii) For her own Maintenance}

It was well settled that the widow could alienate her husband’s property for paying off the debts incurred for her own maintenance. But the important question which came for consideration was whether she could alienate the same for her future maintenance or not?

Now hard and fast rule could be laid down with regard to the above question. It all depended upon the circumstances. The judicial view revealed that she was not supposed to starve and if the circumstances were such that she could not maintain herself from the income of the property, she could alienate the property for her future maintenance as well. It was so held by the Madras High Court in P.Kuthalinga Mudaliar vs. M.M. Shanmuga Mudliar\textsuperscript{75} and Neelambal Ammal vs. Rajarthanam Pilla.\textsuperscript{76}

\textbf{(viii) Maintenance of Dependents}

In Sailabla Debi vs. Baikunath Ghose,\textsuperscript{77} debts contracted to maintain the widowed sisters of the husband who were maintained by him before his death and in Darbari Lal Gobind Saran\textsuperscript{78} debts incurred for the support of the dependent relations in the family were considered for legal necessity justifying alienation by widow.

\textbf{(ix) Payment of Government Revenue}

Borrowing money for the payment of government revenue was held as legitimate for legal necessity provided the revenue could not be met out of the available founds of the estate in Gajadhar Parshad Sahu vs.  

\textsuperscript{74} AIR 1926 Mad, 1078  
\textsuperscript{75} AIR 1926 Mad, 1078  
\textsuperscript{76} AIR 1926 Mad, 464  
\textsuperscript{77} AIR 1956 Mad, 336  
\textsuperscript{78} AIR 1926 Mad, 464
Bindulbarhini Pershad\textsuperscript{79} and Ramanand Lal vs. Damodar Das\textsuperscript{80}. It is so because the government revenue and other government demands are claims of government on the land and their payment must be made by the estate and if these payments cannot be made out of the income and the money has to be borrowed to make them, the estate is liable to satisfy the debts.

\textbf{(x) Canal Dues}

Canal dues under the Northern India Canal and Drainage Act, 1873, stood on the same footing as land revenue for purposes of legal necessity. The Act laid down that canal dues should be recovered from the occupiers. Sections 36 and 45 of the Act provide that any sum which has remained unpaid can be recovered by the Collector from the persons liable as if it is an arrear of land revenue. In Tulsi Prasad vs. Mathur Prasad\textsuperscript{81} the mortgage bond for Rs. 500 was executed by Mt. Mohani Kunwar for the payment of canal dues. The bond was challenged on the ground that there was no legal necessity as the payment did not stand on the same footing as the government revenue. But the Court considered the canal dues on the same footing as the land revenue for the purposes of legal necessity.

\textbf{(xi) Necessary Litigation}

Alienation of the property made by the widow to meet the expenses for a necessary litigation was considered to be for a legal necessity. In order to meet the expenses incidental to the defence of the proceedings of a criminal charge if the widow had to transfer her property, it was held to be for legal necessity in Nobin Chander Chaudhari vs. Kherode Nath Sur.\textsuperscript{82} The brief facts of the case were that the widow mortgaged the property for setting aside the sale of the property which had been made in execution of the decree for money. Money decree was passed against her

\textsuperscript{79} AIR 1924 All 902.
\textsuperscript{80} AIR 1916 Cal. 577
\textsuperscript{81} AIR 1942 All 110.
\textsuperscript{82} (1901-02) 6 Calcutta Weekly notes 648.
as she could not pay the debt which she and her co-sharer took in order to meet the expenses incidental to the defence of the proceedings of a criminal case brought by a tenant alleging that his landlord had forged a Kabuliyat. The loan and the mortgage were held to be for legal necessity Jenkings, C.J., Bhimmaraddi vs. Bhaskar Gangadhar 83 said that the costs of litigation were a recognised head of legal necessity but the widow did not have unlimited power of borrowing.

b) For Religious Purposes

Religion is a matter of faith with individuals or communities. According to B.K. Mukherjee all that we understand by religious purposes or of object is to secure the spiritual well being of a person or persons according to the tenets of the particular religion which he or they believe in. This may imply belief in a future state of existence where a man reaps the fruits of his pious acts done in one existence, and it may be connected with the idea of atonement for past errors of a man and that of making peace with his Maker. Our sages had given supreme importance to the spiritual merit, viz., Manu said:

For, in the next world neither father, nor mother, nor sons, nor relations stay to be his companions spiritual merit alone remains (with him). 84

In Hindu system there is no demarcation between religion and charity, in fact charity is regarded as an essential part of religion. The Hindu religion recognises the existence of a life after death and it believes in the law of, Karma, according to which the good or, bad deeds of a man produce corresponding results in the life or lives to come. All the Hindu sages concurred in holding that charitable gifts were pious acts par excellence, which could bring appropriate rewards to the donor.

Hindu religious and charitable acts from the earliest times were classified under two heads, viz, Istha and Purta. By Istha was meant sacrifices, rites and gifts in connection with the same; Purta on the other hand

83 (1904) 6 Bom L.R. 628
84 Dr. J. Jolly, (TLL 1936) Manu Smriti, Ch. IV, Para 239 Delivered in Aug. 1951, p. 78.
meant and signified other pious and charitable acts which were unconnected with any Srauta or Vedic sacrifices.

The feelings of piety and benevolence have an abiding place in human heart, they must find expression in religious and charitable gifts. Therefore, the Karta or manager of the joint Hindu family was given extended powers and he could alienate not merely his own share but a portion of the joint family for family necessity or for the benefit of family so as to bind the interest of all the coparceners, no matter whether minor or adults. The foundation of this doctrine could be found in the text of Vyasa which was quoted and relied upon by Vijnaneswara and which runs as follows:

"Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family, and especially, for pious purposes."\(^{85}\)

Vijnaneswara’s own view was that powers could be exercised by the manager during minority of the other coparceners\(^ {86}\) but later on it was settled when there was a justifying necessity for the alienation, the other coparceners would be bound even though they were adults.

The expression "Pious Purposes" in the text of Vyasa meant, according to Mitakshara, "the indispensable religious duties, such as obsequies of the father and the like."

Vijnaneswara gave one instance of the Dharmarthe, viz., obsequies of the father and added "and the like". It is clear that the expression included all other indispensable duties such as sradha, upanayanana and performance of other necessary samskara For example, performance of marriage was considered as samskara, therefore, performance of marriage of a member of the joint family, particularly of daughters, was an indispensable duty, though it was also covered under legal necessity. Thus the words "and the like" indicated that the indispensable religious duties were not confined to the

\(^{85}\) Supra Note 42
\(^{86}\) Supra Note 89
funeral obsequies merely, but extended to other religious ceremonies also which were obligatory upon the karta to perform, in discharge of his duties as head of the family.

Strictly speaking, no alienation of the joint family property could be supported when religious rites were optional or personal in their character, but Justice B. K. Mukerjea\textsuperscript{87} was of the view that the judicial opinion seemed to be that a gift of small portion of the family estate by the karta could not be questioned by other coparceners, when the object of the gift was meritorious from the point of view of religion or charity, though there was no obligation on the donor to make the gift.\textsuperscript{88} In the pronouncement of the Judicial Committee in Gangi Reddi vs. Temmi Reddi\textsuperscript{89} a dedication of a portion of the family property, which was small as compared with the total means of the family for the purpose of carrying on choultry was held to be within the powers of karta or father. Their Lordships were of the view that though running a choultry was not an indispensable religious duty, it might be deemed to be settled that even for optional religious works the manager was competent to transfer a small portion of the family property.

c) For the Benefit of the Estate

It is indeed impossible even today to give a precise definition of the term "benefit to the estate". An authoritative pronouncement of the Privy Council in Palaniappa Chetty vs. Sreemath Devasikamony Pandara Sangadhi\textsuperscript{90} bears testimony to it. Lord Atkinson, after review of previous decisions indicated the ambit of 'benefit of the estate' as under:

"It is impossible to give a precise definition of it applicable to all cases, and they do not ...........attempt to do so. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation these and

\textsuperscript{87} Bijan Kumar, (T.L.L.1936),The Hindu Law of Religious and Charitable Trust, p. 89.
\textsuperscript{88} Gopal Chand vs. Bahu Kumar (1834) 5 S.D.A. 24; Raghunath vs. Govind, I.L.R. (1686) 6 All. 16; Sri Thakurji vs. Nand Ahir, I.L.R (19) 43 All. 560; Ramlinga Chotti vs. Sivachidambara chetty, I.L.R. (1919) 43 Mad. 440.
\textsuperscript{89} (1926-27) 54 I.A. 106.
\textsuperscript{90} AIR 1917 P.C. 33.
such like things would obviously be benefit. The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not.\textsuperscript{91}

Although no precise definition of what was benefit to the joint family estate could be given, but it was well established that jeopardising a property, which was already the property of the joint Hindu family, for the purpose of purchasing another property could never under any circumstances be considered as benefit of the estate.\textsuperscript{92} Ever since the important pronouncement in Hanuman Prasad vs. Mt. Babooe\textsuperscript{93} the terms "Necessity" and "Benefit of the estate" were being used side by side. But the very fact the learned Judges stated the power was limited and qualified and it can be exercised right in case of need or to the ‘benefit of estate' prima facie established that these two terms were different. There is no doubt that anything which was necessary in the interests of the estate might be of benefit to it as well. But the term 'Benefit' should be something different more than that. In face 'Benefit' should be something different from compelling necessity or the term ‘Benefit' should seem to import a positive act done to enlarge or improve the estate, and not merely a negative act such as discharge of debts or averting of disaster. The term kutumbarthe which was translated as ‘for the sake of the family' should not be given narrow meaning but it should be interpreted so as to cover all cases of 'Benefit'. Patkar, J. in Ragho vs. Zaga,\textsuperscript{94} observed that: "The explanation of the text of Brihaspati by the Mitakshara in verse 29 is by no means to be considered as exhaustive and may be treated as illustrative and interpreted with due regard to the conditions of modern life."\textsuperscript{95}

Mr. Justice Fazal Ali ventured to suggest in Baijnath Prasad vs. Binda Prasad Singh\textsuperscript{96}, that the same remarks, as pointed out by Patkar J., would apply to the passages which had been quoted from the speech delivered by

\textsuperscript{92} Ram Bilas Singh vs. Ramyat Singh, AIR 1920 Pat. 441.
\textsuperscript{93} Moore’s Indian Appeals (1854–57) p. 393.
\textsuperscript{94} I.L.R. (1929) 53 Bom. 419.
\textsuperscript{95} Ragho v, Maga, I.L. R. (1929) 53 Both 419 at p. 426.
\textsuperscript{96} AIR 1939 P. 97 at p. 102
their lordships in Palaniappa Chetty vs. Sreemath Devasikamony Pandara Sannadhi. In that passage their Lordships simply enumerated certain obvious cases of 'Benefit of the estate but the very fact that they took care to emphasise that it was impossible to give a precise definition of the expression applicable to all cases and that it was difficult to draw the line as to what are benefit and what not, clearly indicated that they did not intend to lay down any exhaustive rule on the subject.

On the basis of the preceding analysis of the case-law it could be safely concluded that there was nothing in the observations of the Judicial Committee of the Privy Council in Palaniappa Chetty vs. Sreemath Devasikamony Sannadhi which justified the view that the transaction must be of a defensive nature. An alienation by the widow could be justified if it was an alienation which a prudent manager of the property would make though there might not be an actual pressure on the estate, i.e., the only limitation was that she, like a karta, must act with prudence and prudence implied caution as well as foresight and excluded hasty, reckless and arbitrary conduct. It was essentially a question of fact arising in each individual case, as to whether the alienation could be justified by the particular circumstances of that case. Moreover, the expression 'Kutumbarthe, which was the textual basis for the doctrine of 'Benefit' was elastic enough to accomplish all transactions which a person would enter into in managing the property. When dealing with transactions by a limited owner what one had to see was not the actual result of the transaction but what might have been expected to be its result at the time the transaction was entered into, and the degree of prudence of the limited owner was no more than what was expected of any other person holding a fiduciary character. So where the transaction was honestly and properly entered into for the benefit of the family, the fact that subsequent events transpired otherwise than anticipated, leading to non-fulfillment of the expectations entertained, at the time could be no reason to

97 AIR 1917 P. C. 33
98 Supra Note 108
condemn it as its propriety had to be judged on the facts and circumstances then existing, unless it could be established that with ordinary foresight the disappointing event that supervened could have been foreseen.

d) **Alienation with the consent of the reversioners**

The question which had agitated the minds of the Hindu jurists was that if she alienated the property with the consent of the reversioners, then what? Whether the consent of the reversioners relaxed the strict principle of Hindu law? Whether the consent per se validated an alienation by a widow or other limited female heir which was not supported by any legal necessity?

The Smriti and the commentators thereon did not approve the view that the widow and the next reversioners could do what they liked with the estate. We find no reference in the Smritis to justify that the mere assent of one who would be the heir if the widow died at the particular moment would entitle the widow to make alienations at her pleasure or squander the estate on purposes which the Smritis would have emphatically condemned.

However, in interpreting the term ‘necessity’ the question of the extent of proof has often cropped up. Somehow or the other it was considered that the best proof of necessity would be where the next reversioner consented to an alienation by the widow. He was the man most interested in the inheritance and he would not act against his interest. But the question whether the consent per se validated the alienations made by the widow, had a long history of fluctuations of opinion. It was for the first time mooted in the well-known case of the Collector of Masulimpatam Cavaly Venkata. Lord Justice Turner, in his speech, said:

“……on the other hand, it may be taken as established that an alienation by her which would not otherwise be legitimate, may become so if made with the consent of her husband’s kindred. But it surely is not the necessary or logical consequence of this latter proposition that in the absence of collateral heirs to the husband, or on their failure, the fetter on the widow’s power of alienation altogether drops. The exception in favour of alienation

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99 Moore’s Indian Appeals (1859-61) p. 529
with consent may be due to a presumption of law that where the consent is given the purpose for which the alienation is made must be proper."

The opinion which was tentatively expressed in the collector of Masulipatam’s case, viz, that consent did not give force per se, but was of evidentiary value, was corroborated by some subsequent decisions. In Raj Lukhee Dabea vs. Gokul Chunder Choudhary.\textsuperscript{100} Sir James Colvile, speaking for the Judicial Committee of the Privy Council, observed, as follows:

..... But the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events, there should be such a concurrence of the members of the family, as suffices to raise a presumption that the transaction was a fair one, and one justified by Hindu law.

The above view of the Privy Council was subsequently followed by the Bombay High Court in Varjjyan Rangji vs. Tula Kumari.\textsuperscript{101}

In Varjyian Rangji’s case,\textsuperscript{102} the sale deed was made conjointly by a Hindu widow and her daughter, named Bai Vakhat, who subsequently predeceased her mother, of immovable property inherited by the widow from her husband.

The grandsons of the second cousin of the widow’s husband instituted a suit to set aside the alienation for want of legal necessity. Sargent, J., speaking for the High Court, observed that ‘In the present case the plaintiffs, although distant heirs, were the heirs presumptive of Narotam at the time of the sale, entitled to succeed in the even of Vakhat dying before her mother without issue, and, as such, clearly interested in disputing the rule. Nor can the mere concurrence of Bai Vakhat, albeit the nearest in succession, (having regard to the state of dependence in which all women are supposed by Hindu law to have their being) be regarded as affording the slightest presumption that the alienation was a justifiable one. On both these grounds we think, the

\textsuperscript{100} Moore’s Indian appeals (1869-70) p. 209.
\textsuperscript{101} I.L.R (1881) 5 Bom 563.
\textsuperscript{102} I.L.R (1884) 6 All 116.
plaintiffs are entitled to succeed.

e) Ratification

As has already been discussed in the preceding pages that the concept of reversioner validated the transaction, it made no difference whether the consent was given by the reversioner before, at or after the transaction. Ratification of the transaction is to be considered where the consent was given after the transaction. Ratification in a broad sense moans confirmation of a previous act. Chief Justice Subba Rao in Seetharamamayya vs. Sarva Chandrayya\(^{103}\) observed that the plaintiff, the son, had ratified the transaction made by the widow under which he got the benefit after he attained majority. As the plaintiff enjoyed the properties after he attained majority absolutely for 35 years and sold the same as an absolute owner it would be unreasonable to hold that he had no knowledge of the transaction and that he was dealing with the property only as an heir of his father, who would be entitled to enjoy the property during the lifetime of the widow.

The same view was reiterated in Dodd Subba Reddi vs. Govinda Reddi\(^{104}\). The brief facts were that the plaintiff was living in the house of the grandmother. He purchased stamps, attested the document and identified his mother at the Registrar's Office. Could it be plausible that the plaintiff, who was assisting the grandmother in bring about the document did not know the contents of the document?

But mere attestation by a relative even though he might be the sole contingent reversioners did not necessarily import concurrence as was observed by the Privy Council in a number of cases viz., Raj Lukhee vs. Gokul Chunder Choudhary,\(^{105}\) Hari Kishan Bhagat VS. Kashi Pershad Singh and Hari Kishan Bhagat vs. Bajrung Sahai Singh\(^{106}\), Ranga Chandra Dhur vs. Jagat Kishore Achariya Choudhary\(^{107}\) and pandurang Krishanji vs.

\(^{103}\) AIR 1955 Andhra Pradesh 68.
\(^{104}\) AIR 1961 Andhra Pradesh 430.
\(^{105}\) Moore's. Indian Appeals (1869-70) p. 209.
\(^{106}\) (1915) 27 I.C. 674.
\(^{107}\) AIR 1916 P.C. 110.
Harkendeya Tukaram.\textsuperscript{108} In fact attestation by itself would neither create estoppel nor imply consent. Rather it proves that the signature of an executing party has been attached to a document in the presence of the witness.

Subsequently, the High Court of Calcutta in Abhoy Churn Attarmoni Dasee\textsuperscript{109}, the Oudh Chief Court in Mathura Prasad vs. Jagat Bahadur Singh\textsuperscript{110} and in Balwant vs. Ram Pat,\textsuperscript{111} the Allahabad High Court in Mst. Lakhpati vs. Rambudh Singh\textsuperscript{112} in Ram Adhar vs. Bhagwan Singh\textsuperscript{113} and Anantoo vs. Ramroop Tiwari\textsuperscript{114} followed the same principle. Thus, mere attestation of a sale deed by the reversioner was not sufficient to fix him with the knowledge of the deed attested or it was not considered to be conclusive by itself of the fact that he was aware of the nature of the transaction or he was a consenting party to an alienation by a Hindu widow, yet attestation combined with other circumstances might amount to evidence of consent. But if a reversioner, who was a party to and was benefitted by a transaction entered into by a Hindu widow or he had attested the document with full knowledge of its contents, then he was precluded from questioning any part of it or, in other words, it can be said that mere attestation could not be considered as conclusive proof of a consent but the case of estoppel came in where circumstances were such that the plaintiff had consented with full knowledge of the contents and if he had done so, then he was precluded from disputing the validity of alienation made by the widow as he was held in Ramagowda Annagowda vs. Bhausaheb\textsuperscript{115} and in Jagannath Singh vs. Hunnarain Singh.\textsuperscript{116}

Thus it can be concluded that though the decisions of the Privy Council gave consent a high evidentiary value, they did not make it conclusive proof.

\begin{footnotesize}
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\item \textsuperscript{108} AIR 1922 P.C. 20.
\item \textsuperscript{109} (1909) 3 I. C. 415.
\item \textsuperscript{110} (1913) 18 I.C. 289.
\item \textsuperscript{111} AIR 1918 Oudh 75.
\item \textsuperscript{112} AIR 1915 All 255.
\item \textsuperscript{113} AIR 1925 All 209.
\item \textsuperscript{114} AIR 1925 All 692
\item \textsuperscript{115} AIR 1927 P. C. 227.
\item \textsuperscript{116} AIR 1960 Patna 565.
\end{itemize}
\end{footnotesize}
It was not a presumption of law in the sense of presumption juris et de jure but its effect is to afford strong corroborative evidence.

The reversioner, however, is not permitted to approbate and reprobate in the same breath. Though it was a matter of option, the reversioner might accept the alienation as valid of binding on him or he could repudiate it but once he choose to affirm the alienation, it was binding on him and he could not repudiate it later. For this one could safely refer to the law as laid down by the Privy Council in Bajrangi Singh vs. Manokarnika Baksh Singh\textsuperscript{117}. The Judicial Committee held that if the next reversioner, either at the time of alienation had consented or ratified the transaction, such transaction could not be reopened by the person who happened to be the nearest reversioner at the time of widow's death. The same view was expressed in Kuppier vs. Kotta Chinnaramier,\textsuperscript{118} in Bijoy Gopal Mukerji vs. Girindra Nath\textsuperscript{119} and in sheshrao vs. Mansarama.\textsuperscript{120}

Thus on the basis of the above case-law it can be summarised as follows:

a. That the consent of reversioner will, if given bonafidly and for consideration estop and bind the reversioner so consenting and those claiming through him apart from the question of necessity or proprietary.

b. The assent has a double aspect, not merely raising a presumption, but also raising an estoppels against the person assenting even though he might not have received any consideration or benefit.

c. The consent must be shown to have been given with the knowledge of the effect of what one was doing and an intelligent intention to consent to such effect.

d. The acquiescence and ratification should be founded on full knowledge of the facts and must be in relation to a transaction which was valid

\textsuperscript{117} (1910-11) 38 I.A.1.
\textsuperscript{118} (1912) 16 I. C. 493
\textsuperscript{119} AIR 1914 P.C. 128
\textsuperscript{120} AIR 1932 Nagpur 103
itself and not illegal and to which effect may be given as against the party by his acquiescence in, and adoption of, the transaction.

e. It is not necessary that the asset or ratification should be before or at the date of the alienation; nor is assent required to be in any particular form. Even a consent given subsequently to alienation serves to validate it, i.e., it makes no difference that it was after and not at the time of transaction of sale because every adoption or ratification of an act already done has retrospective effect and is equal to previous request to do it.

f) **Powers of Alienation under the Hindu Women’s rights to property ACT, 1937**

The Hindu Women’s Rights to Property Act, 1937, ameliorative in character, intended to give better rights to women in respect of property but without interfering with the established Law relating to joint family. Subsections (2) and (3) of Section 3 of the Act reveal that the legislature intended that the Hindu widow should have in the joint family property the same interest to qualify the nature of that interest i.e., it would be a limited interest known to Hindu law as “Woman’s Estate” or to use the correct expression ‘Hindu Widow’s Estate.” The very use of the word woman’s estate prima facie established that she could alienate it for the purposes permitted under the Hindu law i.e., “Legal necessity”, “Religious purposes” and “benefit of estate”. Thus the woman’s estate under the Hindu Woman’s Rights to Property Act, 1937 has all the characteristic features of woman’s estate which were there under the old law. The widow’s powers of alienation have been discussed in detail. Her powers under the 1937 Act are the same because the nature of the property is the same. The act has only given a statutory, recognition to her “woman’s estate”.

**SURRENDER:**

Surrender means renunciation of the estate by the female owner. She

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121 Supra Note 53
has the power of renouncing the estate in favour of nearest reversioners.\textsuperscript{122} This means that by a voluntary act, she can accelerate the estate of the reversioner by conveying absolutely estate and thereby destroying her own estate. This is an act of self-effacement on her part and operates as her death will. In Natwar vs. Dadu,\textsuperscript{123} the Supreme Court held that it is the self effacement by the widow that forms the basis of surrender and not the ex-facía transfer by which the effacement is brought about.\textsuperscript{124} For a valid surrender, the first condition is that it must be of, the entire estate\textsuperscript{125}, though she may retain a small portion for her maintenance\textsuperscript{126}, second condition is that it must be made in a favour of the nearest reversioner or reversioners, in case there are more than one of the same category. Surrender can be made in favour of female reversioner also. The third and the last condition is that surrender must be bonafide, and not a device of dividing the estate with the reversioners.\textsuperscript{127} When a Hindu female surrender her estate the estate vests in the reversioners by the operation of law, and no act of acceptance by the reversioners is necessary. No formalities are necessary. A sale of estate for consideration, to the reversioners cannot be regarded as surrender.\textsuperscript{128}

**ESTATE REVERTED TO NEXT HEIR OF THE LAWFUL OWNER-REVERSION:**

The second characteristic feature to the woman’s estate is that the female estate is that the female owner does not form an independent stock of decent in respect of it. On her death the estate reverts to the heir or heirs of the last full owners as if the later died when the limited estate ceased. The Privy Council said:

“The succession does not open to the heir of the husband until the

\textsuperscript{122} Devi Parsad vs. Gopal (1913) 40 Cal. 721, (F.B.) Per Mukherjee, J.
\textsuperscript{123} 1954 S.C. 61.
\textsuperscript{124} Behari vs. Madho (1891) 19 I.A. 30.
\textsuperscript{125} Natwar vs. Dadu, 1954 S.C. 61.
\textsuperscript{126} Chinammarapp vs. Nerayammal, 1966 Mad. 169.
\textsuperscript{127} Bhagwan Kaur vs. Dhamukdhari 1919 P.C. 75.
\textsuperscript{128} Sureshwar vs. Maheshrani, (1920) 47 I.A. 233.
termination of the widow’s estate upon the termination of estate, the property descends upon those who would have been heir of the husband if he had leaved up to and died at the moment of her death.”

Such heirs may be male or female. They are known as the 'reversioners.' So long as the estate endures there are no reversioners though there is always a 'presumptive reversioner' who, has only a spes-successions (an exception).\(^{129}\)

The reversioners are also not like the remainder man of a life estate. The powers of Hindu female holding woman's estate are more comprehensive than that of a life tenant.

The reversioners take the property of the female when her estate terminates. Her estate terminates on her death. But it can terminate even during her life time. By surrendering the estate she can terminate it. There were other modes of termination also. Before 1956 a posthumous son divested a widow or daughter; an adoption made by the widow of coparcener divested the widow of the sole surviving coparcener. On her own adoption she was divested of the half of the property. If she had inherited it from her husband in certain circumstances her remarriage lead to forfeiture of estate (if she got the right of remarriage by virtue of the Hindu widow remarriage Act, 1856). In such cases the property passed to the reversioners.

**RIGHT OF REVERSIONERS:**

What are the rights of the reversioners in respect of improper handling of the estate by the female owner? The cases of improper handling of estate are mainly two:

(i) She may use the property wastefully and
(ii) She may alienate improperly.

The allied question is: Have the reversioners a right to prevent her from doing any of these acts during her life-time? The answer is in the affirmative It was in this context that the expression. Presumptive reversioners came into

\(^{129}\) Moni Ram vs. Kerry, (1880) 7 I.A. 115.
\(^{130}\) Kalipbhra vs. Palani, 1953 S.C. 195.
vogue. The reversioners have mainly three rights as follows:

1) They can sue the woman holder for an injunction to restrain waste. However, the right cannot be used to harass or to prevent the female from using and enjoying the Property.

2) They can in a represented capacity sue for a declaration that an alienation made by the widow is null and void and will not be binding on them after the death of the widow. But by such a declaration the property did not revert to the woman nor do the reversioner become entitled to it. The alieenee could still retain the property so long as the widow was alive.

3) They can, after the death of the woman or after the termination of estate, file a suit for declaration (or possession or both) that alienation made by the widow was improper and did not bind them. Recently, the Supreme Court said that when a Hindu female holder of woman’s estate make improper alienation, the reversioners are not bound to institute a declaratory suit during the life-time of the female holder. After the death of the woman, they can sue the alieenee for possession of the estate treating the alienation as a nullity.

Section 14 of the Hindu Succession Act, 1956 has abolished woman’s estate, yet reversioners are still relevant in respect of woman’s estate alienated by her before June 17, 1956, the commencement of Hindu Succession Act.

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131 Bijoy vs. Krishana, (1907) 34 I. A. 87. Where the alternation remedies of reversioners are set out.
(B)

HINDU WOMEN’S RIGHT TO PROPERTY – POSITION BEFORE PASSING OF THE HINDU WOMEN’S RIGHT TO PROPERTY ACT, 1937

The best way to judge the position of a nation is to find out the status of women in reality the status of women is the measuring rod for assessing the standard of culture of any age. Thus the social status of women in a country represents the social spirit of the age.\(^\text{133}\)

The rights of women to succeed to any property vary from one religion to other depending on the personal laws followed by them. The religion played a very important role in the devolution of property on the woman in the earlier days. Initially the entire law of succession was uncodified but with the advent of modern governments and legislatures, most of the succession laws have been codified and consolidated. However there is no uniformity in the succession law relating to women following different religions.\(^\text{134}\).

In India, the women enjoyed a secondary status with regard to the succession. This unequal status was sought to be removed by certain legislations governing different religions like The Hindu Women’s Rights to Property Act, 1937, The Hindu Disposition of Property Act, 1916, The Hindu Inheritance (Removal of Disabilities) Act, 1928, The Indian Succession Act, 1925, and The Cochin Christian Succession Act, 1902.

The law relating to testamentary succession among Hindus, Christians and Parsis etc., is contained in the Indian Succession act, 1925. It does not make any distinction between the rights of women and men under a will.

It is proposed to review the familial or social, legal and political position of woman as wife, widow and a daughter in the various stages of development of Hindu law. This position is traced in the historical perspective from Vedic period

\(^{133}\) Dr, Kulwant Gill, Hindu Women’s Right to Property in India, 1986, p.528

to the modern era. However, to draw a conclusion about the position of women is difficult and complicated problem. Diametrically opposite views about the worth, nature and importance of women have been expressed in the same period there are different schools of thought. The one school believes that a woman is the pest gift of God to man. She brings prosperity when she is properly treated and respected and has been called "Lakshmi", the goddess of wealth and prosperity. The holiest object in the world is a virtuous woman, a tear of sorrow rolling down from her eyes melts the heart of even a mighty tyrant. The second school of thought holds the view that the best way to reach God is to avoid women. Sage Agastya says as stated by A.S. Altekar Women combine the fickleness of the lightening, the sharpness of weapon and the swiftness of the eagle.\(^{135}\) Shakespeare has said, Fraility, thy name is woman." They were of the view that woman is the source of all evils, her love is to be dreaded more than the hatred of man; the poor young men who seek women in matrimony are like fish who go to meet the hook."

Dr. A S. Altkar\(^{136}\) suggests that to ascertain the position of women in Hindu society, one should study their position in different circumstances, e.g.

(i) When the circumstances are abnormal, e.g., in war time.

(ii) When the circumstances are normal, i.e., in peace time.

**ABNORMAL CIRCUMSTANCES:**

Dr. A. S. Altekar is of the view that the situation, where the woman had the misfortune of falling into the hands of the enemies, is the rent touchstone to test the genuineness of society's sympathy towards the weaker sex; it enables up to find out how far man is prepared to rise above the prejudice of his sex and judge the woman by an equitable standard. A survey of the past shows that the attitude of the society was very stiff and unsympathetic if the women had the misfortune

\(^{135}\) Dr. A.S. Altekar, The Position of Women in Hindu Civilization, 1987, p. 320

\(^{136}\) Ibid, p. 305.
of falling into the hands of enemies. They found it impossible to get re-admission in their family and society. We have very clear cut historical example of Sri Ram Chandra, who refused to accept back Sita after the overthow of Ravana.

There is no doubt that certain Smriti writers hold the contrary view. But later on the advice of the Smriti writers was silently brushed aside and the door of Hinduism were once for all closed to such women. The reason for this might have been the establishment of Muslim rule Under the Muslim rule it was not easy for women. Who had been captured and married by Muslims, to be accepted back by their Hindu relations. Rather new notions of purity were mainly responsible for the refusal of society to admit back such women.

NORMAL CIRCUMSTANCES:

A study of the ancient literature reveals that in the normal circumstances to the position was not very satisfactory. For example, killing of women was regarded as a very disgraceful act. It was stated that the killing of women was equal to that of killing a Sudra. It however does not, refer to the gravity of the crime, but to the theological dogma that the status of women was equal to that of the Sudra.138

Generally nothing is to be construed in a vacuum and it particularly so in knows the position of Hindu women. Without a brief passing reference to the past the matter cannot be put in the correct perspective. Thus we proceed to discuss the familial or social, legal and political position of women as daughter, wife and widow in different periods.

The proprietary position of women in Hindu Law must be determined by its rules concerning the domain of woman over things or the equivalent of things. There are several modes by which such dominion may be acquired.139 Manu

137 Supra Note 4
mentions seven lawful means of the acquisition of property\textsuperscript{140} and he places inheritance at the top of them of all.

**EARLY LEGAL CONCEPTIONS:**

In order to find out the early legal conceptions relative to the inheritance of women in Hindu Law, we must turn to the evidence furnished by Vedas; for, they represent the first phase in the evolution of Hindu Jurisprudence. It has been affirmed in two of the leading commentaries, Dayabhaga and Viramitrodaya, that there is text of Vedas which is simple authority for the general exclusion of women from inheritance. The Writers of these two treaties base their conclusion on text of Baudhayana, the reputed founder of one of the school of the Block Yajurveda, who says that female are generally incompetent to inherit and quotas in turn a passage of his Veda to support his opinion. The text is as follows Nirindriya Hyadayadah Strionritam.\textsuperscript{141} It may be translated thus:

“Devoid of prowess and incompetent to inherit, women are useless. The commentators have differed not a little as to the precise meaning of this text. Some of them contend that the text can have no possible application to the inheritance of women.\textsuperscript{142} Upon this Vedic text it has been based that one of the fundamental principles of the Hindu law of inheritance has been the general exclusion of the female sex. The theory has been adopted by most of the modern writers on Hindu Law; and the true meaning and authenticity of the text upon which it is based requires discussion, before the theory can be set aside in favour of another. It is therefore, necessary to examine how the text has been interpreted by the leading commentators. It will be further necessary to consider whether the passage quoted by Baudhayana does really occur in the Vedas. Jimutavahana refers to this Vedic text in order to support his conclusion that

\textsuperscript{140} Supra Note 7
\textsuperscript{141} Supra Note 8
\textsuperscript{142} The meaning of Vedic text according to some writers is women are considered disqualified to drink the somajuice and receive no portion of it at the sacrifice.
text of Manu, "To the nearest Kinsman (Sapinda) the inheritance next belongs, excludes female sapindas". He says, "A woman is entitled, proceeds not to the heritage; for females and persons deficient in an organ of sense or member, are deemed incompetent to inherit." The construction of this passage is woman is not entitled to heritage. But the succession of the widow and certain others, viz., the daughter, the mother and paternal grandmother, takes effect under express texts, without any contradiction to this maxim.  

In Viramtrodaya, the Vedic context quoted by Baudhayana is noticed in three places. Mitramisra concludes his discussion thus: "As for the text of Smriti viz., Therefore women are devoid of the senses (nirindriya) and incompetent to inherit and for the text of Manu based upon it, namely. Indeed the rule is that women are always devoid of the senses and incompetent to inherit, these are both to be interpreted to refer to those women whose right of inheritance has not been expressly declared. Haradatta also, has explained these texts in, this very way in his commentary on the Institutes of Gautama, called Mitakshara. But some commentators say that the term 'incompetent to inherit' implies censure only by the reason of its association with the term 'devoid of the senses.' This is not tenable; because it cannot be admitted that the portion, namely, incompetent to inherit; is prohibitory and not condemnatory, for it cannot to be held to be an absolutely superfluous precept in as much as taking of heritage by Women may take place under the desire for property. But the portion 'devoid of the senses' is to be somehow explained as being a Superfluous precept, and purporting the dependence of women on men; for the negation, what is contrary to the nature, meaning as it does of ,things is objectionable. Hence what has been said above forms the best interpretation. The venerable Vidyaranya, however, has in his commentary on the institute to Parasara explained the above text of Sruti in different way. The term incompetent to inherit indicates the wife is not entitled to share in case of her retirement to a forest; the term Anindriyas (rendered above into devoid of the senses) embodies the reason for the same; for it appears from

143 Supra Note 9
the text; viz., female not entitled to taste soma juice; the text being laudatory of
the retirement of the wife into forest on the death of the husband. Then again in
another place where the author deals with the right of paternal grandmother to
inherit, he comments as follows on the same Vedic text cited above. Agreeably,
however, interpretation put upon the text of Sruti, therefore women are devoid of
the senses etc. by the venerable Vidyaranya which previously cited, this text
does not all prohibit women’s right of succession.

So the rules of inheritance given by the ancient law givers were meager. The
reason probably was that property was held invariably by the members of a
joint family and separate acquisitions were in considerable, there was no
necessity to lay down detailed rules of inheritance. On the death of a member in
a coparcenary his male issue took his interest, though it is now usual to speak of
it as passing by survivorship to the entire coparcenary, according to stricter.
Conception, the interest of a coparcener, on his death went as unobstructed
inheritance to his son, grandson and great grandson. It was only when he died
without male issue, it passed by survivorship to other coparceners. The germs of
inheritance, therefore, to be found in the unit of the coparcenary which consisted
of oneself and his son, grandson and great grandson. On the death of a man
who was divided from his coparcenary, his son, grandson and great grandson
were to the persons entitled to his estate.

It has often been stated that women were, as a rule, excluded from
inheritance in the earliest times. It is true, no doubt, that the rights of women as
heirs have been the subject of controversy till the age of the commentators.

LACK OF LEGAL KNOWLEDGE:

There was no necessity for elaborate rules of law, when people in
consciously followed the prevailing practices of enjoying property. When disputes
arose property was then held by the family as the unit of society Under the
Patriarchal system, the father represented the family and had complete control over it. On his death the family and properties passed under the care of the successors to the head of the family.

A few important rules are discernible:

i. Primogeniture was the settled law of the succession in the ancient India. The death of a member did not affect the corporate existence of the family which was to be maintained intact. In that unit the first born would become the leader of the family, entitled to the family property as his birth right.

ii. In the course of time equal distribution of the property among the sons came to be recognised. Though the normal mode of enjoyment of the property was the joint family system or communistic system, the rival principle of individual ownership reared its head at an early stage in the history of Hindu Law and both existed together. The principle of primogeniture helped to preserve the joint family system. The text in Taithriya Samhita "they distinguished the eldest son by the heritage" recognizes the superior right of the first born. On the other side there was rule of equality illustrated by texts like, "Manu divided his wealth equally among his sons." On examination of the Smritis, it is patent that original rule or primogeniture had been gradually declining giving place to the equable rule of equal distribution.

iii. The germs of inheritance according to law are to be formed in the unit of coparcenary consisting of sons, grandsons and the great grandsons.

The primary heir, when the heritage does not pass to the family as a whole, was no doubt the son. In normal cases, the son would be son of body born in lawful wedlock. The aurasa son was the best type of son from the religion point of view. But besides the aurasa son,
there were subsidiary admission of the strangers into the family and such admission was justified by fictitious extensions of consanguinity. Though no uniform principle was adopted, it would appear that among subsidiary sons those with slightest trace of blood connection even though illegitimate, were preferred to those whose relationship was only artificially created.

iv. In course of time, fresh principles of conduct got established. Besides the son, ruled had to be framed regarding persons entitled to succeed to the property of a deceased and the order in which they could claim priority. The rules stated by some of Smriti writers are:

a) Gautama: Persons allied by the funeral or lations, bearing the same family name and connected with the same Rishi shall share the estate of childless owner or the widow shall take the estate.

b) Budhayana: on the failure of sapindas, sakulya are heirs, if there be none, the spiritual preceptor the pupil or the priest takes the inheritance.

c) Apastamba: If there is no male issue, nearest kinsman inherits or in default of kindred the preceptor or failing him disciple or the daughter may take the inheritance.

In Smritis, no undue importance should be attached to the omission of all female relations as heirs, as the rules of inheritance themselves were very scanty. While in some respects the position of woman particularly that of the daughter, the wife and mother, was high, passages derogatory to women, scattered in the earliest literature have been taken to spell the inferior status of women.\textsuperscript{144} The father protects a woman in her childhood, husband during youth; her son in old age, a woman is never fit for independence.\textsuperscript{145} In the case of inheritance to the property of men, males were preferred to women as heirs

\textsuperscript{144} Dr. J. Jolly, (T.L.L., 1883), Outline of History of Hindu Law of Partition, Inheritance and Adoption , p. 192.

\textsuperscript{145} Supra Note 12
while in the case of inheritance to woman’s property, women were preferred to women as heirs, but neither were completely, excluded from inheritance to the others property. Neither brothers, nor parents but sons are, heirs to the deceased, but if he leaves no sons, the father instead of brothers takes the share.

The rights of women to maintenance were, in every case very substantial right in the family on the whole. It seems that some of the later commentators erred in drawing adverse inferences from vague references to women's succession in the earlier Smritis. The view of ‘Mitakshara’ on the matter, which are unmistakable, ought to be decisive, Vijnanesvara nowhere endorses the view that women are incompetent to inherit. He does not even refer to the Vedic text. He points out that the text of Narada which declares dependence of women is not incompatible with their acceptance of property. Vijnanesvara does not accept the position that the chains of such females only to be admitted as have the support of express text. On the other hand, he holds that paternal grandmother who is not mentioned in any special text is entitled to inherit as gotraja sapindas and from what he says in II, V,5 it is quite clear that the wives of the other lineal ancestors also are entitled to succeed as gotraja sapindas. Vijnanesvar’s view on these points which are followed by other commentators and by the courts are conclusive against the assumption that there is any general principle of Hindu Law that women are excluded from inheritance unless named in the ancient texts. His definition of sapinda and his postponing the father to the mother, the grandmother to grandmother, the great grandmother, as well as his treatment, of Stridhana are clear indication in the same direction.

The law in all the states, except in Madras and Bombay, is that women are in general, excluded from inheritance to the estate of a man who dies without issue. Till recently, the recognized exceptions were widow, the daughter, the mother, the father’s father, the father’s mother and also female lineal

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ancestresses above the last.\textsuperscript{147}

**STATUTORY HEIRS & THEIR RIGHTS:**

Daughter, daughter’s daughter and sister have been admitted as heirs under Mitakshara law and placed immediately after a father’s father and before a father’s brother.

**DAUGHTER IN LAW AND GRAND DAUGHTER-IN-LAW:**

The Hindu women’s Right to Property ACT 1937 has made the widow of a man’s predeceased son as well as his own widow, heir to his property, both alongwith and in default of his male issue.\textsuperscript{148}

**RIGHT OF WIDOW:**

The right of the widow to succeed as heir to her husband was recognized tow thousand years ago. Virdha Manu, Yajnavalkya, Vishnu, Brihaspati, Katyayana, Sanka Likhita and Devata fully recognized her right to succeed to her husband. Narada’s refusal to recognize her, evidently after the time of Vishnu and Yajnavalkya, is puzzling. It must have been due to a difference in the usages of his country, where remarriage, evidently prevailed as, about the same time; Brihaspati is most emphatic in her favour. She is, in fact, the first heir to the property of a man who dies without male issue.\textsuperscript{149}

In all the authoritative digests and commentaries, the widow’s right of succession to her husband is universally acknowledged.

Widow heir to separate Property- Vijnanesvara’s conclusion is that the widow is entitled to inherit to her husband, if he died separated and not reunited and left no male issue. It is immaterial whether the division was in status only or was followed by a division by metes and bounds. The text of Mitakshara is,

\textsuperscript{147} Jagdamba v. Secretary of State (1889) 16 Cal, 367, 373.
\textsuperscript{148} The act does not affect succession to estate descendible to a single heir.
\textsuperscript{149} Sheo Singh v. Mt. Dakho 1870) 6NWP  382, 406, So, by local custom, a widow is sometimes
therefore, it is settled rule, that a wedded wife, being chaste, takes the whole estate of a man, not subsequently reunited with them, dies leaving no male issue\textsuperscript{150} and this rule which necessarily followed from the view taken by the Mitakshara of the rights of undivided members, applied, till recently, in the Mitakshara jurisdiction. Even where a man died undivided but left separate or self acquired property, his widow succeeded to it though the undivided left separate or self acquired property, passed by survivorship to his coparceners, as was settled by Shivaganga case. Their lordship referring to the Mitakshara(II, I, 39) observed: “the text is propounded as a qualification of the larger and more general proposition in favour of widows and consequently in construing it we have to consider what are the limits of that qualification rather than that are the limits of the rights.”\textsuperscript{151} According to Dayabhaga, on the other hand, which proceeded on the ground of her right to offer funeral obligations to her deceased husband, a widow succeeded to her husband’s share when he was undivided just she would succeed to the entire property of one who was separated.\textsuperscript{152} But as in a Dayabhaga joint family the husband is held quasi severalty, the distinction is merely a verbal one.

**RIGHT OF DAUGHTER:**

The Daughter, from the earliest time, was recognized as a heir, probably at first as an appointed daughter and later whether appointed or not. By the time of Kautilya, daughters were heirs.\textsuperscript{153} A text of Manu states her right of inheritance: “A son is even as one's self, and the daughter is equal to son; so long as she there as father's own self, how can any other take property.\textsuperscript{154} Some of the commentators on Manu read the text as referring only at an appointed daughter. But the word used is Duhita (daughter) and not putrika (appointed daughter). The appointed daughter was already dealt with by his two previous

\textsuperscript{150} Rewan Persad V. Mt. Radha (1846), 4M 1 A 137, 148, 152.
\textsuperscript{151} Tikari v. Tikari (1878) 51A 160; 4 Cal. 190.
\textsuperscript{152} Durag Nath v. Chintamani (1904) 31 Cal. 214.
\textsuperscript{153} Supra note 12
\textsuperscript{154} Supra note 21
verses 127 and 128. Brihaspati who closely follows Manu clearly understood it to refer to an unappointed daughter for he himself says, "a daughter, like son, springs from each member of man, how then should any other mortal inherit the father's property while she lives". Vishnu, Yajnavalkya and Katayana also recognize the right of daughter. The

The Mitakshara, citing the text of Katyayana Brihaspati declares that "the daughter inherits in absence of wife", holds that in the case of daughters ownership in the father’s wealth arises by birth itself as in case of sons. The Smritichandrika and following it, the Viramitrodaya, as well as the Vivadachintamani understand the text of Manu as referring to unpointed daughter and reject the contrary view of other commentators.

RIGHT OF MOTHER:

The mother is not mentioned as a heir by Gautama, Baudhayana, Apastamba or Vasistha, her claim and that of the grandmother, are expressly asserted by Manu. "A mother shall obtain the inheritance of a son, who dies without leaving issue, and the mother be dead, the paternal grandmother shall take estate."

Vishnu also inserts the mother in the list of heirs next after the father and Yajnavalkya places both parents after the daughters. Her claim is also mentioned by Brihaspati and Katayana. Narada states her right to share on partition by the sons after the death of their father, but does not refer to her as an heir.

\[155\] Supra note 22
\[156\] 21 MLJ (Journal ), p. 317.
\[157\] Supra note 23
\[158\] Supra note 25
\[159\] Supra note 26
\[160\] Supra note 27
\[161\] Supra note 28
RIGHT OF GREAT GRANDMOTHER:

The right of paternal great grandmother, though not mentioned in any text, is expressly deduced by the Mitakshara saying "In this manner upto seventh must be under stood the succession of smanagotra sapindas" The Subodhini commenting on the Mitakshara carries the enumeration further by including as heirs the paternal Grandmother’s mother and grandmother and states some rules apply in the case of samanodakas. Accordingly in Jagdamba Koer vs. Secretary of State the wives of lineal ancestors beyond the great grandmother were held to be heirs.

RIGHT OF SISTER:

The sister is also declared entitled to take share either upon an original partition or after a reunion; but this is a different thing from taking as heirs Brihaspati says, if there be a sister, she is entitled to share of his property. This law regarding the wealth of one destitute of issue and who has no wife or father. A passage from Sankha and Likhita, "A daughter shall take the woman’s property, and she is alone, is heir to the wealth of mother’s son who leaves no male issue, would certainly seem to be a direct affirmation of the right to a sister to succeed to her brother." A text of Brihaspati is quoted in Jagan Nath’s Digest, "But she who is his sister is next entitled to take the share, in law concerns him who leaves no issue, nor wife nor father, nor mother:" and Kulluka, explaining Manu, IX, 212 referring to a reunited brother affirms the sister’s succession if he leaves neither son nor wife nor, father, nor mother Nanda Pandita and Balam Bhatta interpret the next of the Mitakshara which gives the inheritance to brothers, as including sisters, so that the brothers take first and sisters next, but this order is opposed to the whole spirit of the Banaras law. It if not accepted even by Mauykhya, which makes the sister come in after

162 Supra note 29
163 Supra note 30
164 Supra note 31
165 Supra note 32
the grandmother under different text and the interpretation has been rejected by the judicial committee.

HINDU WOMEN AND SUCCESSION – POSITION OF HINDU WOMAN BEFORE 1956 IN BRIEF:

The Hindu law of intestate Succession has been codified in the form of The Hindu Succession Act, 1956, which bases its rule of succession on the basic Mitakshara principle of propinquity, i.e., preference of heirs on the basis of proximity of relationship. Prior to 1956, there used to be two major schools of Hindu law viz. Mitakshara and Dayabhaga which laid down different principles of succession. There was no uniformity in the rights of the Hindus following different schools to succeed to the property of a Hindu who died intestate i.e., without leaving a will behind him.

Therefore, before 1956, the property of a Hindu woman was divided into two heads viz. (a) Stridhan (b) Woman's Estate. Stridhan literally means woman's property. The Hindu law interpreted Stridhan as the properties received by a woman by way of gift from relations. It included movable as well as immovable properties. The texts relating to Stridhana except in the matter of succession are fairly adequate and clear. Manu defined Stridhana as that what was given before the nuptial fire, what was given at the bridal procession, what was given in token of love and what was received from a brother, a mother, or a father? The property inherited by a woman from a male or female was not considered as Stridhana and it was not her absolute property for the purpose of inheritance. However Bombay school considered the property inherited by a woman form a male other than widow, and mother etc. as Stridhan. Under all schools of Hindu law, the property obtained by a woman in lien of maintenance by adverse possession and property purchased with Stridhan was considered as Stridhan.

166 V. May, IV, 8, 119; Bhagwan v. Warubai (1908) 32 Bom. 300, 311
167 Mayne, Hindu Law and Usage, 13th Ed. 1995 p. 875